

## SENATE BILL No. 239

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 16-44-3-11; IC 24-4.6-5.5; IC 24-5-0.5-3.

**Synopsis:** Pump disclosures by automotive fuel retailers. Requires a retailer that markets automotive fuel to the general public and that has at least one retail location in Indiana from which the retailer dispenses automotive fuel for sale to do the following: (1) Post the automotive fuel rating of all automotive fuels that the retailer sells by putting at least one label on the face of each dispenser through which the retailer sells such fuels. (2) Comply with the federal Petroleum Marketing Practices Act and regulations adopted under that act. (3) Comply with the state department of health's motor fuels inspection program. Provides that for purposes of these provisions, "automotive fuel" includes alternative liquid automotive fuels, including the following: (1) Methanol, denatured ethanol, and other alcohols. (2) Mixtures containing 85% or more by volume of: (A) methanol; (B) denatured ethanol; or (C) other alcohols; with gasoline or other fuels. Provides that a person who violates any of the specified requirements: (1) commits a deceptive act that is actionable by the attorney general; and (2) is subject to all applicable remedies and penalties set forth in the deceptive consumer sales act.

**Effective:** July 1, 2016.

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January 7, 2016, read first time and referred to Committee on Homeland Security & Transportation.

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Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

# SENATE BILL No. 239

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 16-44-3-11 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 11. **(a)** A person  
3 violates this chapter if the person does any of the following:  
4 (1) Markets a motor fuel without properly labeling the octane  
5 number (antiknock index) of the motor fuel in conformance with  
6 the octane posting requirements contained in 16 CFR Part 306  
7 and issued under the Petroleum Marketing Practices Act of 1978  
8 (15 U.S.C. 2801).  
9 (2) Submits:  
10 (A) incorrect;  
11 (B) misleading; or  
12 (C) false information;  
13 regarding the registration of a motor fuel or a motor fuel outlet.  
14 (3) Hinders or obstructs the state department in the enforcement  
15 of this chapter.  
16 (4) Markets a motor fuel that is not in compliance with this  
17 chapter.



- 1 (5) Markets a motor fuel at an outlet that is not registered by the  
 2 person under this chapter.
- 3 **(b) A person who violates this chapter:**
- 4 **(1) commits a deceptive act that is actionable by the attorney**  
 5 **general under IC 24-5-0.5-4(c); and**
- 6 **(2) is subject to all applicable remedies and penalties set forth**  
 7 **in IC 24-5-0.5.**
- 8 **(c) The attorney general is authorized to:**
- 9 **(1) carry out investigative and enforcement actions (including**  
 10 **necessary procedural actions) with respect to violations or**  
 11 **suspected violations of this chapter; and**
- 12 **(2) pursue any applicable remedies or penalties described in**  
 13 **subsection (b)(2) with respect to violations of this chapter.**
- 14 SECTION 2. IC 24-4.6-5.5 IS ADDED TO THE INDIANA CODE  
 15 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 16 JULY 1, 2016]:
- 17 **Chapter 5.5. Pump Disclosures by Retailers of Automotive Fuels**
- 18 **Sec. 1. (a) As used in this chapter, "automotive fuel" has the**  
 19 **meaning set forth in 16 CFR 306.0(i).**
- 20 **(b) The term includes alternative liquid automotive fuels,**  
 21 **including:**
- 22 **(1) methanol, denatured ethanol, and other alcohols; and**  
 23 **(2) mixtures containing eighty-five percent (85%) or more by**  
 24 **volume of:**
- 25 **(A) methanol;**  
 26 **(B) denatured ethanol; or**  
 27 **(C) other alcohols;**
- 28 **with gasoline or other fuels, as set forth in 16 CFR 306.0(i).**
- 29 **Sec. 2. (a) As used in this chapter, "automotive fuel rating" has**  
 30 **the meaning set forth in 16 CFR 306.0(j).**
- 31 **(b) With respect to:**
- 32 **(1) gasoline, the term means the octane rating; and**  
 33 **(2) an alternative liquid automotive fuel (other than biodiesel,**  
 34 **biomass-based diesel, biodiesel blends, or biomass-based**  
 35 **diesel blends), the term means the commonly used name of the**  
 36 **fuel with a disclosure of the amount, expressed as the**  
 37 **minimum percentage by volume, of the principal contents of**  
 38 **the fuel;**
- 39 **as set forth in 16 CFR 306.0(j).**
- 40 **Sec. 3. As used in this chapter, "retailer" means any person**  
 41 **that:**
- 42 **(1) markets automotive fuel to the general public for ultimate**



1 consumption, as provided in 16 CFR 306.0(f); and  
 2 (2) has at least one (1) retail location in Indiana from which  
 3 the person dispenses automotive fuel for sale to the general  
 4 public for ultimate consumption.

5 **Sec. 4. A retailer shall do the following:**

6 (1) Post the automotive fuel rating of all automotive fuel that  
 7 the retailer sells to consumers. A retailer shall perform the  
 8 posting required by this subdivision:

9 (A) by putting at least one (1) label on the face of each  
 10 dispenser through which the retailer sells automotive fuels,  
 11 as required by 16 CFR 306.10; and

12 (B) in conformance with 16 CFR 306.10 and 16 CFR  
 13 306.12 and with any other applicable requirements under  
 14 the federal Petroleum Marketing Practices Act (15 U.S.C.  
 15 2801 et seq.) or regulations adopted under that act.

16 (2) Comply with all other applicable requirements set forth in  
 17 the federal Petroleum Marketing Practices Act (15 U.S.C.  
 18 2801 et seq.) and with all applicable regulations adopted  
 19 under that act, including the recordkeeping requirements set  
 20 forth in 16 CFR 306.11.

21 (3) Comply with the state department of health's motor fuels  
 22 inspection program under IC 16-44-3.

23 **Sec. 5. (a) A person who violates section 4 of this chapter:**

24 (1) commits a deceptive act that is actionable by the attorney  
 25 general under IC 24-5-0.5-4(c); and

26 (2) is subject to all applicable remedies and penalties set forth  
 27 in IC 24-5-0.5.

28 **(b) The attorney general:**

29 (1) may act under the authority granted by 16 CFR 306.4(b)  
 30 to:

31 (A) carry out investigative and enforcement actions  
 32 (including necessary procedural actions) with respect to  
 33 violations or suspected violations of section 4(1) and 4(2) of  
 34 this chapter; and

35 (B) pursue any applicable remedies or penalties described  
 36 in subsection (a)(2) with respect to violations of section 4(1)  
 37 and 4(2) of this chapter; and

38 **(2) is authorized to:**

39 (A) carry out investigative and enforcement actions  
 40 (including necessary procedural actions) with respect to  
 41 violations or suspected violations of section 4(3) of this  
 42 chapter; and



- 1           **(B) pursue any applicable remedies or penalties described**  
 2           **in subsection (a)(2) with respect to violations of section 4(3)**  
 3           **of this chapter.**
- 4           **(c) The investigative powers, enforcement powers, remedies,**  
 5           **and penalties set forth in this section are cumulative and are**  
 6           **supplemental to any other investigative powers, enforcement**  
 7           **powers, remedies, and penalties available under:**
- 8               **(1) this section; or**  
 9               **(2) any other state or federal law, rule, or regulation;**  
 10           **for a violation of section 4 of this chapter.**
- 11           SECTION 3. IC 24-5-0.5-3, AS AMENDED BY P.L.65-2014,  
 12           SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 13           JULY 1, 2016]: Sec. 3. (a) A supplier may not commit an unfair,  
 14           abusive, or deceptive act, omission, or practice in connection with a  
 15           consumer transaction. Such an act, omission, or practice by a supplier  
 16           is a violation of this chapter whether it occurs before, during, or after  
 17           the transaction. An act, omission, or practice prohibited by this section  
 18           includes both implicit and explicit misrepresentations.
- 19           (b) Without limiting the scope of subsection (a), the following acts,  
 20           and the following representations as to the subject matter of a  
 21           consumer transaction, made orally, in writing, or by electronic  
 22           communication, by a supplier, are deceptive acts:
- 23               (1) That such subject of a consumer transaction has sponsorship,  
 24               approval, performance, characteristics, accessories, uses, or  
 25               benefits it does not have which the supplier knows or should  
 26               reasonably know it does not have.
- 27               (2) That such subject of a consumer transaction is of a particular  
 28               standard, quality, grade, style, or model, if it is not and if the  
 29               supplier knows or should reasonably know that it is not.
- 30               (3) That such subject of a consumer transaction is new or unused,  
 31               if it is not and if the supplier knows or should reasonably know  
 32               that it is not.
- 33               (4) That such subject of a consumer transaction will be supplied  
 34               to the public in greater quantity than the supplier intends or  
 35               reasonably expects.
- 36               (5) That replacement or repair constituting the subject of a  
 37               consumer transaction is needed, if it is not and if the supplier  
 38               knows or should reasonably know that it is not.
- 39               (6) That a specific price advantage exists as to such subject of a  
 40               consumer transaction, if it does not and if the supplier knows or  
 41               should reasonably know that it does not.
- 42               (7) That the supplier has a sponsorship, approval, or affiliation in



- 1 such consumer transaction the supplier does not have, and which  
2 the supplier knows or should reasonably know that the supplier  
3 does not have.
- 4 (8) That such consumer transaction involves or does not involve  
5 a warranty, a disclaimer of warranties, or other rights, remedies,  
6 or obligations, if the representation is false and if the supplier  
7 knows or should reasonably know that the representation is false.
- 8 (9) That the consumer will receive a rebate, discount, or other  
9 benefit as an inducement for entering into a sale or lease in return  
10 for giving the supplier the names of prospective consumers or  
11 otherwise helping the supplier to enter into other consumer  
12 transactions, if earning the benefit, rebate, or discount is  
13 contingent upon the occurrence of an event subsequent to the time  
14 the consumer agrees to the purchase or lease.
- 15 (10) That the supplier is able to deliver or complete the subject of  
16 the consumer transaction within a stated period of time, when the  
17 supplier knows or should reasonably know the supplier could not.  
18 If no time period has been stated by the supplier, there is a  
19 presumption that the supplier has represented that the supplier  
20 will deliver or complete the subject of the consumer transaction  
21 within a reasonable time, according to the course of dealing or the  
22 usage of the trade.
- 23 (11) That the consumer will be able to purchase the subject of the  
24 consumer transaction as advertised by the supplier, if the supplier  
25 does not intend to sell it.
- 26 (12) That the replacement or repair constituting the subject of a  
27 consumer transaction can be made by the supplier for the estimate  
28 the supplier gives a customer for the replacement or repair, if the  
29 specified work is completed and:
- 30 (A) the cost exceeds the estimate by an amount equal to or  
31 greater than ten percent (10%) of the estimate;
- 32 (B) the supplier did not obtain written permission from the  
33 customer to authorize the supplier to complete the work even  
34 if the cost would exceed the amounts specified in clause (A);
- 35 (C) the total cost for services and parts for a single transaction  
36 is more than seven hundred fifty dollars (\$750); and
- 37 (D) the supplier knew or reasonably should have known that  
38 the cost would exceed the estimate in the amounts specified in  
39 clause (A).
- 40 (13) That the replacement or repair constituting the subject of a  
41 consumer transaction is needed, and that the supplier disposes of  
42 the part repaired or replaced earlier than seventy-two (72) hours



- 1 after both:
- 2 (A) the customer has been notified that the work has been
- 3 completed; and
- 4 (B) the part repaired or replaced has been made available for
- 5 examination upon the request of the customer.
- 6 (14) Engaging in the replacement or repair of the subject of a
- 7 consumer transaction if the consumer has not authorized the
- 8 replacement or repair, and if the supplier knows or should
- 9 reasonably know that it is not authorized.
- 10 (15) The act of misrepresenting the geographic location of the
- 11 supplier by listing a fictitious business name or an assumed
- 12 business name (as described in IC 23-15-1) in a local telephone
- 13 directory if:
- 14 (A) the name misrepresents the supplier's geographic location;
- 15 (B) the listing fails to identify the locality and state of the
- 16 supplier's business;
- 17 (C) calls to the local telephone number are routinely forwarded
- 18 or otherwise transferred to a supplier's business location that
- 19 is outside the calling area covered by the local telephone
- 20 directory; and
- 21 (D) the supplier's business location is located in a county that
- 22 is not contiguous to a county in the calling area covered by the
- 23 local telephone directory.
- 24 (16) The act of listing a fictitious business name or assumed
- 25 business name (as described in IC 23-15-1) in a directory
- 26 assistance database if:
- 27 (A) the name misrepresents the supplier's geographic location;
- 28 (B) calls to the local telephone number are routinely forwarded
- 29 or otherwise transferred to a supplier's business location that
- 30 is outside the local calling area; and
- 31 (C) the supplier's business location is located in a county that
- 32 is not contiguous to a county in the local calling area.
- 33 (17) The violation by a supplier of IC 24-3-4 concerning
- 34 cigarettes for import or export.
- 35 (18) The act of a supplier in knowingly selling or reselling a
- 36 product to a consumer if the product has been recalled, whether
- 37 by the order of a court or a regulatory body, or voluntarily by the
- 38 manufacturer, distributor, or retailer, unless the product has been
- 39 repaired or modified to correct the defect that was the subject of
- 40 the recall.
- 41 (19) The violation by a supplier of 47 U.S.C. 227, including any
- 42 rules or regulations issued under 47 U.S.C. 227.



- 1 (20) The violation by a supplier of the federal Fair Debt  
 2 Collection Practices Act (15 U.S.C. 1692 et seq.), including any  
 3 rules or regulations issued under the federal Fair Debt Collection  
 4 Practices Act (15 U.S.C. 1692 et seq.).  
 5 (21) A violation of IC 24-5-7 (concerning health spa services), as  
 6 set forth in IC 24-5-7-17.  
 7 (22) A violation of IC 24-5-8 (concerning business opportunity  
 8 transactions), as set forth in IC 24-5-8-20.  
 9 (23) A violation of IC 24-5-10 (concerning home consumer  
 10 transactions), as set forth in IC 24-5-10-18.  
 11 (24) A violation of IC 24-5-11 (concerning home improvement  
 12 contracts), as set forth in IC 24-5-11-14.  
 13 (25) A violation of IC 24-5-12 (concerning telephone  
 14 solicitations), as set forth in IC 24-5-12-23.  
 15 (26) A violation of IC 24-5-13.5 (concerning buyback motor  
 16 vehicles), as set forth in IC 24-5-13.5-14.  
 17 (27) A violation of IC 24-5-14 (concerning automatic  
 18 dialing-announcing devices), as set forth in IC 24-5-14-13.  
 19 (28) A violation of IC 24-5-15 (concerning credit services  
 20 organizations), as set forth in IC 24-5-15-11.  
 21 (29) A violation of IC 24-5-16 (concerning unlawful motor  
 22 vehicle subleasing), as set forth in IC 24-5-16-18.  
 23 (30) A violation of IC 24-5-17 (concerning environmental  
 24 marketing claims), as set forth in IC 24-5-17-14.  
 25 (31) A violation of IC 24-5-19 (concerning deceptive commercial  
 26 solicitation), as set forth in IC 24-5-19-11.  
 27 (32) A violation of IC 24-5-21 (concerning prescription drug  
 28 discount cards), as set forth in IC 24-5-21-7.  
 29 (33) A violation of IC 24-5-23.5-7 (concerning real estate  
 30 appraisals), as set forth in IC 24-5-23.5-9.  
 31 (34) A violation of IC 24-5-26 (concerning identity theft), as set  
 32 forth in IC 24-5-26-3.  
 33 (35) A violation of IC 24-5.5 (concerning mortgage rescue fraud),  
 34 as set forth in IC 24-5.5-6-1.  
 35 (36) A violation of IC 24-8 (concerning promotional gifts and  
 36 contests), as set forth in IC 24-8-6-3.  
 37 (37) A violation of IC 21-18.5-6 (concerning representations  
 38 made by a postsecondary credit bearing proprietary educational  
 39 institution), as set forth in IC 21-18.5-6-22.5.  
 40 **(38) A violation of the state department of health's motor fuels**  
 41 **inspection program under IC 16-44-3, as set forth in**  
 42 **IC 16-44-3-11 and IC 24-4.6-5.5-5.**





1           **(39) A violation of IC 24-4.6-5.5-4(1) or IC 24-4.6-5.5-4(2)**  
2           **(concerning the posting of automotive fuel ratings of**  
3           **automotive fuel sold by retailers, and compliance with the**  
4           **federal Petroleum Marketing Practices Act (15 U.S.C. 2801 et**  
5           **seq.) and regulations under that act), as set forth in**  
6           **IC 24-4.6-5.5-5.**

7           (c) Any representations on or within a product or its packaging or  
8           in advertising or promotional materials which would constitute a  
9           deceptive act shall be the deceptive act both of the supplier who places  
10          such representation thereon or therein, or who authored such materials,  
11          and such other suppliers who shall state orally or in writing that such  
12          representation is true if such other supplier shall know or have reason  
13          to know that such representation was false.

14          (d) If a supplier shows by a preponderance of the evidence that an  
15          act resulted from a bona fide error notwithstanding the maintenance of  
16          procedures reasonably adopted to avoid the error, such act shall not be  
17          deceptive within the meaning of this chapter.

18          (e) It shall be a defense to any action brought under this chapter that  
19          the representation constituting an alleged deceptive act was one made  
20          in good faith by the supplier without knowledge of its falsity and in  
21          reliance upon the oral or written representations of the manufacturer,  
22          the person from whom the supplier acquired the product, any testing  
23          organization, or any other person provided that the source thereof is  
24          disclosed to the consumer.

25          (f) For purposes of subsection (b)(12), a supplier that provides  
26          estimates before performing repair or replacement work for a customer  
27          shall give the customer a written estimate itemizing as closely as  
28          possible the price for labor and parts necessary for the specific job  
29          before commencing the work.

30          (g) For purposes of subsection (b)(15) and (b)(16), a telephone  
31          company or other provider of a telephone directory or directory  
32          assistance service or its officer or agent is immune from liability for  
33          publishing the listing of a fictitious business name or assumed business  
34          name of a supplier in its directory or directory assistance database  
35          unless the telephone company or other provider of a telephone  
36          directory or directory assistance service is the same person as the  
37          supplier who has committed the deceptive act.

38          (h) For purposes of subsection (b)(18), it is an affirmative defense  
39          to any action brought under this chapter that the product has been  
40          altered by a person other than the defendant to render the product  
41          completely incapable of serving its original purpose.

